KU YAN KU ABDULLAH

v.

KU IDRIS KU AHMAD & ORS.

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[ORIGINATING SUMMONS NO. 24-1343-89]
13 OCTOBER 1991

LAND LAW: *Co-proprietorship - Partition of land - Whether application should be made only to the Land Administrator - Termination of co-proprietorship - National Land Code 1965, ss. 140, (1), 141, (1)(a), 141A, 142(1), 145, Part 9, Chapter 2.*

The plaintiff and defendants were co-proprietors of a piece of land in Kedah. The plaintiff owned 5/7th share and the remainder was owned by the defendants. The plaintiff's application to partition the land was rejected by the Kota Setar Land Administrator. The plaintiff subsequently applied to the High Court under s. 145 of the National Land Code for the land to be partitioned. The defendants argued that the High Court did not have jurisdiction to hear the plaintiff's application.

Held:

[1] Section 141A of the NLC does not compel a proprietor holding a majority share in a piece of land to apply to the Land Administrator for approval to partition the land. It is merely a permissive provision.

[2] Therefore, a co-proprietor with a majority share in a piece of land is not barred from applying to the High Court under s. 145(1) of the NLC for termination of the co-proprietorship and for partitioning of the land under s. 145(2) of the NLC. There is nothing in any part of Part 9, Chapter 2 of the NLC which requires a co-proprietor to first apply to the Land Administrator for partition under s. 145 of the NLC before applying to the High Court.

[Order accordingly.]

Legislation referred to:
National Land Code 1965, ss. 140, (1), 141, (1)(a), A, 142(1), 145, Part 9, Chapter 2

For the plaintiff - Zainal Rashid; M/s. Ahmad Farid & Associates
For the defendants - George John; M/s. George John & Co.

JUDGMENT

K.C. Vohrah J:

The plaintiff is a co-proprietor of a piece of land to the extent of 5/7th undivided share. The 4 defendants are co-proprietors of the remaining 2/7th share. The land is comprised in SP No. 24156, Lot 303, Mukim of Tajar, Kota Setar, Kedah.

The plaintiff applied to the Land Administrator, Kota Setar for the land to be partitioned. When that application was made is not known but it is apparent from the affidavit filed by the plaintiff that the other co-proprietors neither joined in nor consented to the application. Presumably the application was made with s. 141A of the National Land Code (the Code) in mind. The application was rejected. No reason was given for the rejection in the letter from the Director of Land and Mines, Kedah where the plaintiff was advised to apply to the High Court to partition the land. The plaintiff then applied to this Court to exercise its powers to partition the land under s. 145 of the Code on 16 September 1989 in accordance with a

proposed plan which was annexed to the supporting affidavit of this application and for the issuance of two title deeds, one for the plaintiff and another for the 4 defendants.

There were several technical problems with the application and there was an amendment made to the application with the leave of Court on 21 February 1991. A new proposed plan to partition the land has been submitted and there is now also a prayer for the issuance of 5 title deeds.

The defendants say that with the new application the Court has no jurisdiction to decide in the matter. The argument is that since there is a new proposed plan the plaintiff has to apply to the Land Administrator to partition the land in accordance with s. 141A as the plaintiff is a co-proprietor holding the majority share in the land; and this has to be done before the matter can be dealt with by the High Court.

Section 141A reads:

> 141A. Notwithstanding the provisions of ss. 140 and 141, a co-proprietor or co-proprietors holding a majority share may apply for approval to partition the said land.

By implication, through the reference to ss. 140 and 141, application may be made by a co-proprietor or co-proprietors holding a majority share in land to the Land Administrator to partition the land even if the other co-proprietors do not agree to the application.

Section 140(1), in gist, provides that alienated land held by co-proprietors may by agreement between them and by approval of certain authorities, be partitioned so as to vest in each of them, under a separate title, a portion of the land of an area proportionate as nearly as may be to his undivided share in the whole.

Section 141(1)(a) prohibits approval of a partition unless each of the co-proprietors has either joined in or consented to the making of the application for its approval.

In my view s. 141A does not compel a co-proprietor holding the majority share in a piece of land to apply to the Land Administrator for approval to partition the land; it is merely a permissive section, and if he elects to make such an application, s. 142(1) would apply to him bearing in mind para. (e) of s. 142(1) and bearing in mind that the Land Administrator would have to act in accordance with subsection (3) and (4) of the section in dealing with such an application.

In my view, too, a co-proprietor having the majority share in a piece of land thus is not barred from applying to the High Court under subsection (1) of s. 145 to have the co-proprietorship terminated and the land partitioned under subsection (2) of s. 145 on the general ground that a co-proprietor will not join in nor consent to the making of an application for partition. There is no reference in any part of chapter 2 of part 9 of the Code, a chapter dealing with partition of lands, that in respect of a co-proprietor holding the majority share in a piece of land he must first apply to the Land Administrator for partition under s. 145 before he applies to the High Court.

I therefore rule that I have the jurisdiction to hear this application. In order for me to adjudicate in the matter it would be necessary for me to consider the grounds on which the defendants are objecting to the application and I give them 2 months from today to file their affidavit showing their grounds of objection. I would also require evidence of the comparative value of the individual portions proposed in the plan.

Also found at [1991] 3 CLJ 2872